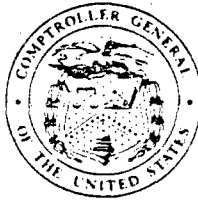


# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FILE: B-184925

DATE: December 12, 1975

MATTER OF: Control Data Corporation

## DIGEST:

Protest involving use of formal advertising for procurement of ADP maintenance initially filed with agency prior to bid opening and subsequently filed with GAO more than 3 weeks after bid opening is untimely, since protest in order to be considered timely under GAO Bid Protest Procedures had to be filed in GAO either within 10 days of notice to protester of initial adverse agency action or prior to bid opening. Moreover, protest does not raise significant issue for consideration by GAO since guidelines are in process of being developed to cover procurement of ADP maintenance in future.

By letter dated September 15, 1975, Control Data Corporation (CDC) protests the award to Sirvess under IFB No. 26-75, issued by the National Oceanic and Atmospheric Administration, Department of Commerce, for maintenance of a CDC Model 6600 computer system. CDC maintains that it is impossible to use formal advertising as a method of procuring maintenance for high technology automatic data processing equipment. The IFB, it is alleged, does not contain a clear and accurate description of the technical requirements for the service to be provided, including the procedure by which it will be determined that the requirements have been met. The Department of Commerce maintains that the CDC protest is untimely. CDC, on the other hand, submits that even if the protest is untimely, it should be considered on the merits since it raises a significant issue affecting procurement practices.

CDC submitted a letter to the contracting officer on August 1, 1975, objecting to the use of formal advertising as a means of procuring maintenance and the inclusion of what CDC claims were certain unrealistic evaluation criteria. CDC received no agency response to this letter, but the IFB was modified on August 5 with regard to the evaluation criteria. A further letter was delivered by CDC on the day of bid opening, August 22, 1975. In this letter CDC again protested the use of an IFB for maintenance on the basis that it is not possible to achieve the degree of specificity required by the procurement regulations.

By letter of August 29, 1975, the contracting officer rejected the CDC protest as untimely, since protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. CDC had hand-carried its protest letter to the contracting officer within 15 minutes of bid opening. Since there was no indication given, either on the outside of the envelope or by instructions from the person delivering the envelope, as to the nature of its contents, the envelope was filed with the other responses to the solicitation and was opened with the other bids in accordance with standard office procedure. Consequently, the contracting officer determined that the protest was untimely as it was not filed prior to bid opening.

As noted above, CDC then filed its protest with this Office on September 15, 1975.

Section 20.2 of our Bid Protest Procedures provides:

"(a) If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control.

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening \* \* \*

It is clear that CDC's protest is untimely under our procedures. CDC's initial protest of August 1, 1975 raised objections to the use of advertising for this procurement and to the IFB evaluation criteria. On August 5 the IFB evaluation criteria were modified. We believe it should have been apparent to CDC at the time that the agency did not intend to withdraw the IFB and to reissue the procurement as a "negotiated RFP", as urged in the August 1 protest. Under our timeliness standards, any subsequent protest on this matter should have been filed by CDC with our Office either prior to the bid opening

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or within 10 days after notice of the agency's August 5 action. Since CDC's protest was filed with our Office more than 3 weeks after the bid opening, the protest is untimely.

With regard to CDC's allegation that this protest raises an issue significant to procurement practices and procedures, we note that the General Services Administration (GSA) is in the process of developing guidelines for the procurement of ADP maintenance services. The proposed guidelines will provide for procurement of ADP maintenance services both by advertisement and by negotiation. Drafts of the proposed guidelines have been distributed to industry, including the protester, for comment prior to issuance by GSA. Upon issuance by GSA the guidelines would be available for use by all agencies of the Federal Government including the Department of Commerce. In view of the proposed issuance of these guidelines for the procurement of ADP maintenance services we do not believe that the Department of Commerce's use of formal advertisement to procure these services is a significant issue which could be considered under section 20.2(c) of the Bid Protest Procedures. ✓

*Milton Jordan*  
for Paul G. Dembling  
General Counsel